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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

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May 4, 2020

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G St. N.W.
Washington, D.C. 20552

Dear Director Kraninger:

We write regarding the Consumer Financial Protection Bureau's (CFPB or Bureau) Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule (Payday Rule). We are disturbed by recent press reports that extensively detail improper interference and manipulation of the rulemaking process for the Payday Rule by political appointees at the Bureau.¹ This may also explain why the Bureau has been pursuing a Payday Rule that would allow payday lenders to continue to issue loans that borrowers cannot repay and that would trap them in cycles of debt. Given these new revelations on top of the many pre-existing issues, we ask that you immediately halt work on the Payday Rule.

The internal Bureau memorandum disclosed in press reports further suggests that from the outset of Mr. Mulvaney's time at the CFPB, he and his political appointees were determined to repeal the existing Payday Rule (2017 Payday Rule).² One of Mr. Mulvaney's first acts after becoming Acting Director was to announce that the Bureau would reconsider the 2017 Payday Rule.³ Because of the memorandum, there is even more to suggest that he made this decision without any cost-benefit analysis, any briefing from career staff, or any new information that would justify the rule's reconsideration.⁴ The memorandum also brings to light potentially disturbing information that career staff were discouraged from offering any reasons or justifications that would not support Mr. Mulvaney's decisions.⁵

The memorandum provides details of other instances in which political appointees worked to predetermine a course of action.⁶ For example, at an industry conference, a senior political

¹ See <https://www.nytimes.com/2020/04/29/business/cfpb-payday-loans-rules.html>, and Aug. 9, 2019 email and attached internal memorandum (Bureau Memo), available at <https://int.nyt.com/data/documenthelper/6918-jonathan-lanning-cfpb-payday-rule/bfcc48b9ea9238728da2/optimized/full.pdf#page=1>.

² <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps/>.

³ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/>.

⁴ See Bureau Memo Timeline at 12/13/17, 1/16/18 (Mulvaney announces intent to reconsider 2017 Payday Rule), 4/26/18 ("no benefit-cost analyses done in support of decision to reconsider").

⁵ See Bureau Memo Timeline at 5/31/18.

⁶ See, e.g., *id.* at 5/21/19).

appointee apparently previewed information with payday lenders regarding “the Bureau’s general approach to revoke the [ability-to-repay] provisions”⁷ before this information was made available to the public. The memorandum indicates that this political operative shared this information on October 4, 2018—three weeks before the Bureau announced on October 26, 2018 that it was going to reconsider the 2017 Payday Rule’s ability-to-repay provisions.⁸ If true, this would not only be improper, but contrary to what the Bureau was concurrently telling Congress that “no decision had been made” about the 2017 Payday Rule.⁹

The memorandum also details the alleged persistent, repeated interference and attempts to manipulate or misinterpret research by political appointees to support their predetermined repeal outcome, including:

- “attempted influence into how the staff’s [cost-benefit] economic analysis should be framed and presented,” but which “show[ed] some significant errors in economic reasoning”¹⁰;
- “advocating for ignoring the majority of the available research, and handpicking studies that supported a specific conclusion, regardless of their vintage or quality”;¹¹
- comments pushing career staff to “ignore numerous published estimates, its own internal analysis, and analyses that outside parties supplied during the 2017 Rule’s notice and comment period because an individual in the front office ‘doesn’t agree with them’”;¹² and
- political appointees’ repeated reliance on study findings that are contradicted by the underlying data or studies written by industry-funded researchers.¹³

When you became Director, you had the opportunity to reverse course and begin a new rulemaking consistent with the “robust use of cost benefit analysis” that you described at your confirmation hearing.¹⁴ That did not occur. Your first and only briefing with career staff on the payday rulemakings was on January 15, 2019.¹⁵ As the memorandum details, political interference in the rulemaking process apparently continued throughout your tenure.¹⁶

The memorandum provides details of a CFPB rulemaking process that, if true, flagrantly violates the Administrative Procedure Act’s requirements—in which political appointees exerted improper influence, manipulated or misinterpreted economic research, and overruled career staff

⁷ *Id.* at 10/1/18 and 10/4/18.

⁸ See <https://www.consumerfinance.gov/about-us/newsroom/public-statement-regarding-payday-rule-reconsideration-and-delay-compliance-date/>.

⁹ Bureau Memo Timeline at 10/1/18 and 10/4/18.

¹⁰ Bureau Memo Timeline at 12/28/19.

¹¹ *Id.* At 1/10/19.

¹² *Id.* at 5/21/19.

¹³ *Id.* at 9/25/18 (“Mann’s memo(s) showing his assertions are contradicted by his data) and 5/16/19 (same); 2/25/19 (discussing payday lending lawyer writing academic studies); see also <https://www.washingtonpost.com/business/2019/02/25/how-payday-lending-industry-insider-tilted-academic-research-its-favor/>.

¹⁴ See K. Kraninger Opening Statement at July 18, 2019 U.S. Senate Committee on Banking, Housing, and Urban Affairs Hearing, <https://www.banking.senate.gov/imo/media/doc/Kraninger%20Testimony%207-19-183.pdf>.

¹⁵ Bureau Memo Timeline at 1/15/19.

¹⁶ See, e.g., Bureau Memo Timeline at 12/28/18, 1/8/19, 1/9/19, 2/6/19, 2/26/19, 5/21/19, 5/28/19, 6/23/19.

to support a predetermined outcome. In light of these disturbing allegations, we urge you to halt work on the Payday Rule immediately and begin the rulemaking process anew. Your failure to do so not only calls into question the integrity of the rulemaking process, but could also result in grievous harm to consumers.

Sincerely,

/s/ Sherrod Brown
Sherrod Brown
United States Senator

/s/ Elizabeth Warren
Elizabeth Warren
United States Senator

/s/ Doug Jones
Doug Jones
United States Senator

/s/ Chris Van Hollen
Chris Van Hollen
United States Senator

/s/ Catherine Cortez Masto
Catherine Cortez Masto
United States Senator

/s/ Tina Smith
Tina Smith
United States Senator

/s/ Jack Reed
Jack Reed
United States Senator

/s/ Brian Schatz
Brian Schatz
United States Senator

/s/ Jon Tester
Jon Tester
United States Senator

/s/ Robert Menendez
Robert Menendez
United States Senator

/s/ Richard J. Durbin
Richard J. Durbin
United States Senator

/s/ Mark R. Warner
Mark R. Warner
United States Senator